

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**CASE NUMBER: 8:03-CR-77-T-30TBM**

**HATEM NAJI FARIZ**

**/**

**DEFENDANT HATEM NAJI FARIZ'S COMBINED RESPONSE IN  
OPPOSITION TO THE GOVERNMENT'S CIPA MOTIONS**

Defendant, HATEM NAJI FARIZ, by and through undersigned counsel, hereby respectfully submits his combined response in opposition to the government's Second Motion for Leave to File an *Ex Parte, In Camera* Submission Under Seal, Pursuant to Section 4 of the Classified Information Procedures Act ("CIPA") and Rule 16(d)(1) of the Federal Rules of Criminal Procedure and its Third Motion For a Pretrial Conference and Protective Order Pursuant to CIPA. (Docs. 1012 & 1013.) As grounds in support, Mr. Fariz states:

**I. The Government's Motion for Leave to File Under CIPA**

On May 5, 2005, the government filed the above-referenced motion and memorandum in support. The legal basis for this motion is nearly identical to a similar motion filed by the government on September 9, 2004. (Doc. 619.) Mr. Fariz understands that the Court has already granted the government's motion and respectfully moves for reconsideration of the Court's order in this regard. (Doc. 1015.) To avoid burdening the Court with unnecessary repetition, in filing this response in opposition Mr.

Fariz repeats and incorporates the objections made in his response of September 23, 2004 to the government's first CIPA-related motion. (Doc. 645.)

Additionally, Mr. Fariz separately addresses one particular issue potentially raised by the government's motion. To the extent that this motion contemplates the disclosure of Jencks Act materials pertaining to the government's proposed expert witness, Matthew A. Levitt, Mr. Fariz would note that he has previously requested "the production of memoranda, presentation materials, and other oral or written conclusions, including but not limited to those generated by Matthew Levitt, a prospective expert witness for the government, while employed by the FBI regarding the Palestinian Islamic Jihad and/or this prosecution." (Doc. 954 at 18); *see also United States v. Baptista-Rodriguez*, 17 F.3d 1354, 1366-68 & n.15 (11th Cir. 1994). To the extent that the government is referring to reports of Mr. Levitt in its motion, the government asserts that any materials produced by him while employed by the FBI are "not inconsistent with the witness' anticipated testimony." (Doc. 1012 at 7.) This is not the appropriate standard under the Jencks Act, 18 U.S.C. § 3500, which contemplates the production of all witness statements that relate to the subject matter of his testimony. *See, e.g., United States v. Calderon*, 127 F.3d 1314, 1334-35 (11<sup>th</sup> Cir. 1997).

Further, to the extent that the government is relying on the lack of inconsistency between these reports and Mr. Levitt's proposed testimony, the key determination here should be whether or not these reports are inconsistent with anything Mr. Levitt has ever publicly stated or written in his capacity as a purported expert on terrorism. Given the

fact that Mr. Levitt has produced a good deal of writing in various media on the alleged activities of the Palestinian Islamic Jihad, Mr. Fariz respectfully believes that it will be difficult for the Court to make a determination as to whether his public reports differ from his statements while employed at the FBI. See Mr. Levitt's online biography at <http://www.washingtoninstitute.org/templateC10.php?CID=5>. In addition, under *Brady v. Maryland*, the government has a continuing duty to promptly turn over exculpatory material, even after trial begins, if that material is likely to cast doubt on the reliability of a witness like Mr. Levitt, whose testimony could be determinative of guilt or innocence. *United States v. Jordan*, 316 F.3d 1215, 1253 (11<sup>th</sup> Cir. 2003).

## **II. The Government's Motion for a Protective Order**

On May 5, 2005, the government filed the above-referenced motion and memorandum of law in support. The protective order contemplated by this motion is overly restrictive and essentially identical to the government's previous requests for protective orders. In the interest of avoiding burdensome repetition, Mr. Fariz objects for the same reasons stated in his objections to the government's first and second motions for a protective order previously filed with the Court and hereby incorporates those objections into this response. (Docs. 203 & 585.)

WHEREFORE, Defendant Hatem Naji Fariz respectfully requests that the Court reconsider its order granting the government's Second Motion for Leave to File an Ex Parte, In Camera Submission Under Seal, Pursuant to Section 4 of CIPA and Rule 16(d)(1) of the Federal Rules of Criminal Procedure and deny the government's Third Motion For a Pretrial Conference and Protective Order Pursuant to CIPA.

Respectfully submitted,

R. FLETCHER PEACOCK  
FEDERAL PUBLIC DEFENDER

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 16th day of May, 2005, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ Wadie E. Said  
Wadie E. Said  
Assistant Federal Public Defender